



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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MEMORANDUM

TO: The Commission

FROM: Anthony Herman *JA*
General Counsel

Daniel A. Petalas *DAP*
Associate General Counsel
for Enforcement

Peter G. Blumberg *PGB*
Assistant General Counsel

Mark Allen *MA*
Attorney

SUBJECT: MURs 6566 and 6604 (Lisa Wilson-Foley for Congress *et al.*)
Recommendation to Delay Consideration of Enforcement Matters

I. INTRODUCTION

These matters involve allegations that Lisa Wilson-Foley for Congress (the "Committee") received in-kind contributions from her family business in violation of the Federal Election Campaign Act of 1971, as amended, (the "Act" or "FECA").¹ According to the Complaints, Apple Health Care, Inc. ("Apple Health"), whose president is Wilson-Foley's husband Brian Foley, paid John Rowland, a former Governor of Connecticut, as a "consultant" while he performed campaign work for the Committee. The Complaints allege that Apple Health's payments to Rowland were in fact salary payments for campaign work and therefore unreported corporate contributions from Apple Health to the Committee in violation of 2 U.S.C. §§ 441b(a) and 434(b).²

¹ The Committee is the principal campaign committee of Lisa Wilson-Foley, a candidate for the U.S. House of Representatives in the Fifth Congressional District of Connecticut in 2012. Wilson-Foley lost the August 14, 2012, primary election.

² The MUR 6566 Complaint raises this allegation only; the MUR 6604 Complaint repeats this allegation and attaches a copy of the MUR 6566 Complaint; and the MUR 6604 Complaint also alleges that Rowland, a radio talk show host, and CBS Radio Stations Inc. (WTIC), made an impermissible in-kind corporate contribution to the Committee when Rowland used his radio show to attack one of Wilson-Foley's opponents.

We believe that holding these matters in abeyance is the appropriate course of action.³

II. FACTUAL BACKGROUND

The Complaints state that they are “based upon information from media sources and other information generally available to the public, including statements made by the Wilson-Foley campaign itself.” MUR 6566 Compl. at 1 (May 1, 2012); MUR 6604 Compl. Ex. 1 at 1 (July 2, 2012). The articles attached to the Complaints report that Rowland had a business relationship with Apple Health, that he performed work for the Wilson-Foley campaign, and that he was not paid by the campaign.⁴ The Committee has not disclosed any disbursements or debts owed to Rowland, and no disbursements or any debts owed to or contributions from Apple Health. The Complaints allege that Apple Health’s payments to Rowland were in fact salary payments for campaign work and are therefore unreported corporate contributions from Apple Health to the Committee.

The Complaints, supported by a press report, also allege that Rowland offered campaign consulting services to another congressional candidate, Mark Greenberg, prior to Greenberg’s 2010 run for Congress, and that Rowland proposed that he be paid through Greenberg’s nonprofit animal shelter.⁵ MUR 6566 Compl. at 2; MUR 6604 Compl., Ex. 1 at 2. The

³ The Complaint in another matter, MUR 6522, alleges that the Committee and Wilson-Foley received impermissible in-kind contributions from Apple Health, as well as from other family businesses, All Star Therapy, LLC, (“All Star”) and Blue Fox Enterprises, Inc., (“Blue Fox”). Specifically, the Complaint alleges that Wilson-Foley’s appearance in television advertisements for Apple Health constitutes a corporate contribution from Apple Health to the Committee and Wilson-Foley. The Complaint also alleges that the posting of these ads on YouTube and postings featuring the Committee and Wilson-Foley on the Facebook pages of All Star and Blue Fox, and on the website of All Star, constitute corporate contributions from those companies to the Committee and Wilson-Foley.

we do not recommend holding this matter in abeyance and are addressing MUR 6522 in a separate First General Counsel’s Report because the allegations are distinct from the allegation under criminal review.

⁴ See Jordan Fenster, *Lisa Wilson-Foley Criticized for John Rowland Backing by Mike Clark, Who Put Him Behind Bars*, (Connecticut) REGISTER CITIZEN, Apr. 5, 2012 (“Fenster April 5 article”), available at http://www.ct5thdistrict.com/2012/04/05/lisa-wilson-foley-criticized-john-rowland-backing-5th-fox-put-bars/?doing_wp_cron=1358521999.6464390754699707031250; Jordan Fenster, *John Rowland Was Paid by Lisa Wilson-Foley’s Husband in a ‘Private Business Relationship’*, (Connecticut) REGISTER CITIZEN, Apr. 23, 2012, available at <http://www.ct5thdistrict.com/2012/04/23/rowland-paid-private-business-relationship-lisa-wilson-foleys-husband/>.

⁵ Jordan Fenster, *John Rowland Offered Mark Greenberg Campaign Help in Exchange for Animal Shelter Pay*, (Connecticut) REGISTER CITIZEN, Apr. 24, 2012, (“Fenster April 24 article”) available at <http://ct5thdistrict.registercitizen.com/2012/04/24/mark-greenberg-declined-john-rowland/>. Greenberg reportedly turned down Rowland’s proposal. See *id.*

1 Complaints allege that Rowland's relationship with the Wilson-Foley campaign was similarly
2 structured, suggesting a pattern of unlawful conduct.
3

4 Apple Health and the Committee filed responses in MUR 6566 asserting that the
5 Complaint does not allege a violation of the Act but rather describes the permissible activity of
6 an individual volunteering time to a political campaign when employed by another entity.
7 Committee Resp. at 1-3 (July 10, 2012); Apple Health Resp. at 1-6 (June 22, 2012). The
8 Committee contends that there is no basis for the allegation that Apple paid Rowland to work on
9 the Wilson-Foley campaign. Committee Resp. at 4. Respondents also assert that Rowland's
10 alleged offer to Greenberg in the 2010 cycle is irrelevant to the activity at issue in MUR 6566.
11 Committee Resp. at 2; Apple Health Resp. at 5. Although Respondents do not directly deny that
12 Rowland was paid by Apple Health to work on the campaign, a Wilson-Foley spokesman
13 reportedly stated that the payments to Rowland were coincidental and not related to Rowland's
14 unpaid work on the campaign.⁶ Rowland did not respond to the MUR 6566 Complaint,⁷
15 although he reportedly denied the allegation regarding his offer to Greenberg and was quoted
16 that he was "going to stop volunteering for the Lisa Wilson-Foley campaign."⁸
17

18 The Committee publicly released the Rowland contract under which he purportedly
19 worked for Apple Health, in response to questions posed by one of Wilson-Foley's opponents in
20 the 2012 election.⁹ See Attach. The contract, between Rowland and the Law Offices of
21 Christian B. Sheldon, Esq. LLC, which according to the Committee provides consulting services
22 to Apple Health, states that, at a monthly salary of \$5,000, Rowland would perform "consulting
23 services" related to "marketing, strategic advice and business consulting" from October 1, 2011
24 to March 31, 2012. Attach. at 1, 4-5. Although the "Effective Date" of the contract is October 1,
25 2011, the signatures of Rowland and Sheldon are dated November 1, 2011, 40 days later.
26 Attach. at 4, 8. The Committee also released a "Statement by Brian Foley, President of Apple
27 Rehab," dated April 24, 2012, purporting to describe the work Rowland performed as "work[ing]"

⁶ See *Wilson-Foley Claims Husband's Payment to Rowland Not Related to 5th District Campaign*, (Connecticut) REGISTER CITIZEN, Apr. 25, 2012, available at <http://ct5thdistrict.registercitizen.com/2012/04/25/wilson-foley-claims-husbands-payment-related-5th-district-campaign/>.

⁷ Rowland responded to the MUR 6604 Complaint, exclusively regarding the radio show allegation.

⁸ See Matt DeRienzo, *John Rowland Ends Relationship with Wilson-Foley Campaign, Denies Greenberg Accusation*, (Connecticut) REGISTER CITIZEN, May 2, 2012, available at <http://www.ct5thdistrict.com/2012/05/02/breaking-john-rowland-ends-relationship-wilson-foley-campaign-denies-greenberg-accusation/>.

⁹ See <http://library.constantcontact.com/download/get/file/1107990572647-11/Letter+Response+to+Mike+Clark.pdf>. The Committee released the contract as an attachment to a letter from Wilson-Foley's campaign manager, Christopher Syrek, to Michael Clark and Mike Clark for Congress, dated April 25, 2012. See Attach. at 1-2. Clark and Mike Clark for Congress are the complainants in MUR 6566. The Committee reportedly made the Rowland contract public "hours" after the Complaint was filed. See Daniela Altamari, *Wilson-Foley Campaign Responds to Mike Clark's FEC Complaint, Releases Contract with Rowland*, HARTFORD COURANT, Apr. 25, 2012, available at <http://courantblogs.com/capitol-watch/wilson-foley-responds-to-mike-clarks-fec-complaint-releases-contract-between-rowland-and-apple-rehab/>.

1 with the company's executive management team on several short term strategic initiatives[,] . . .
2 includ[ing] visiting various healthcare facilities where he met with management and provided
3 feedback on census and business development initiatives."¹⁰ Attach. at 3.
4

5 The press accounts attached to the Complaints note Rowland's criminal record.¹¹
6 Rowland pleaded guilty to a federal charge of corruption in office on December 23, 2004, related
7 to his service as Connecticut's governor, and was sentenced to a year in prison and four months
8 of home confinement.¹²
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¹⁰ This statement is attached to the Syrek letter. See n.9 above.

¹¹ See Fenster April 5 article; Fenster April 24 article.

¹² See Robert D. McFadden, *An Ex-Governor Says He's Guilty*, NEW YORK TIMES, Dec. 24, 2004, available at <http://www.nytimes.com/2004/12/24/nyregion/24rowland.html?ref=johngrowland&r=0>; William Yardley and Stacey Stowe, *A Contrite Rowland Gets A Year for Accepting \$107,000 in Gifts*, NEW YORK TIMES, Mar. 19, 2005, available at <http://www.nytimes.com/2005/03/19/nyregion/19rowland.html?ref=johngrowland>.

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9 **IV. CONCLUSION**

10 We believe that it is in the best interest of both the Commission's enforcement process
11 to hold the Commission's consideration of these matters
12 in abeyance. Holding the matter in abeyance would not undermine the Commission's
13 enforcement matter, and could aid the administrative process. At the very earliest, the statute of
14 limitations would not begin to run until October 1, 2016; thus, postponing the Commission's
15 treatment of the MUR for a reasonable amount of time would not place the enforcement matter
16 in jeopardy of exceeding the applicable limitations period.
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20 Finally, holding a MUR in abeyance
21 under these circumstances is consistent with the treatment by the Commission of similarly
22 situated MURs. See Certification, MUR 6528 (Michael Grimm *et al.*) (approving on a 5-0 tally a
23 recommendation to hold matter in abeyance) (Nov. 1, 2012); MUR 5225 (Hillary Rodham
24 Clinton for U.S. Senate Committee) (approving on a 5-0 no-objection tally to hold
25 enforcement matter in abeyance (Jan. 21, 2003); *see also* First
26 Gen. Counsel's Rpt. at 3, 8, MURs 6363, 6440 (Friends of Frank Guinta) (recommending reason
27 to believe) (May 9, 2011).
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29 **V. RECOMMENDATION**
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31 Hold MURs 6566 and 6604 in abeyance at this time.
32
33

34 Attachment
35 Rowland contract

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Lisa Wilson-Foley

for Congress

April 25, 2012

Michael Clark
Mike Clark for Congress
1051 Farmington Avenue
Farmington, CT

Hand Delivered

Dear Mike:

Enclosed you will find the information that you requested in your release concerning any and all business relationships between John G. Rowland, family members and the Lisa Wilson Foley 2012 campaign, companies associated and or owned by Lisa Wilson Foley and or Brian Foley.

In your release, you stated:

"Lisa Wilson Foley must publicly disclose any and all agreements between Brian Foley, his associated businesses, and John Rowland."

"She must disclose all agreements between herself, her campaign, Apple Rehab and the Rowland family."

"These disclosures must include all dates and amounts of payments as well as explanations for any non-disclosures to this point."

"Further, I have instructed my staff to file a formal complaint with the Federal Election Commission seeking its investigation of alleged activity."

Here is a specific response to your requests;

John G. Rowland and Brian Foley

Enclosed is a contract between Christian B. Shelton, Attorney at Law, and John G. Rowland. Shelton provides consulting services to Apple Rehab, which is owned by Brian Foley. The contract explains the financial terms. The contract was stipulated for six months and began late last year on October 1, 2011 and concluded in March of 2012.

Enclosed you will also find enclosed a statement by Apple Rehab concerning the scope of work between John G. Rowland and the company.

PO Box 1220 ★ Avon, CT 06001 ★ www.wilsonfoley2012.com

PAID FOR BY LISA WILSON-FOLEY FOR CONGRESS

Attachment
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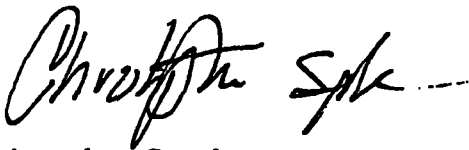
John G. Rowland and Lisa Wilson for Congress, 2012

There are no contracts or payments, past or present, between John G. Rowland, his family member and the Lisa Wilson Foley for Congress 2012 campaign.

John G. Rowland and companies owned by Lisa Wilson Foley

There are no contracts or payments between John G. Rowland, his family members and the companies associated with Lisa Wilson Foley.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Chris Syrek", with a horizontal line extending from the end.

Christopher Syrek

Campaign Manager

Lisa Wilson Foley for Congress

For Immediate Release

Date: April 24, 2012

Statement by Brian Foley, President of Apple Rehab

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Former Governor John Rowland, who's relationship with Apple's ownership spans two decades, was employed as a consultant to Apple Rehab to work with the company's executive management team on several short term strategic initiatives. Mr. Rowland's contract commenced on October 1, 2011, for a term of six months, which expired on March 31, 2012. Specifically, Mr. Rowland focused on areas where the former governor's unique skill sets and experiences provided insight and expertise not commonly available through the utilization of other professional consultants.

As a former executive leader, Mr. Rowland's experience providing fundamental solutions to complex issues positioned him to consult on a myriad of issues relevant to the management of a large and diverse health care organization.

During the contract period, Mr. Rowland consulted on labor relations issues specific to union and contract negotiations. His responsibilities included visiting various healthcare facilities where he met with management and provided feedback on census and business development initiatives. The former governor met regularly with Apple's Chief Operating Officer and performed duties based on senior leadership's direction. He attended Board of Directors meetings as requested by Apple's senior management team or company ownership. To date, Mr. Rowland's role as a consultant for Apple Rehab has been fulfilled and his duties concluded.

###



CHRISTIAN B. SHELTON
ATTORNEY AT LAW
7 SOUTH MAIN STREET, BRANFORD, CT 06405
P: 203.483.9333 F: 203.483.9888

CONSULTING AGREEMENT

THIS CONSULTING AGREEMENT (the "Agreement") is made and entered into this 1st day of October 2011 (the "Effective Date") by and between the Law Offices of Christian B. Shelton, Esq. LLC, with its principal place of business at 7 South Main Street, Branford, CT 06405 (hereinafter referred to as the "Company") and John Rowland of 98 Leonard Road, Middlebury, Connecticut 06772 (hereinafter referred to as the "Consultant").

WHEREAS, the Company wishes to engage the Consultant to provide the services described herein and Consultant agrees to provide the services for the compensation and otherwise in accordance with the terms and conditions contained in this Agreement,

NOW THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, accepted and agreed to, the Company and the Consultant, intending to be legally bound, agree to the terms set forth below.

I. TERM.

Commencing on the Effective Date, and continuing for a period of six (6) months ("Term"), unless earlier terminated pursuant to Article 4 hereof, the Consultant agrees that he will serve as a consultant to the Company. This Agreement may be renewed or extended for any period as may be agreed by the parties.

II. DUTIES.

The Consultant shall provide the following services ("Services"):

- a) Perform such consulting services for the Company regarding marketing, strategic advice and business consulting for the Company's clients or managing Members employment interests;
- b) The Consultant shall meet with the Company or the Company's designees as needed but at least two times per month;
- c) Provide education, opinions and information on any issue the Company or its Managing Member requires.

The Consultant represents and warrants to the Company that there are no contractual or other restrictions or obligations which are inconsistent with the execution of this Agreement, or which will interfere with the performance of Services. Consultant represents and warrants that the execution and performance of this Agreement will not violate any policies or procedures of any other person or entity for which he/she performs Services concurrently with those performed herein.

In performing the Services, Consultant shall comply, to the best of their knowledge, with all business conduct, regulatory and health and safety guidelines established by the Company for any governmental authority with respect to the Company's business.

III. CONSULTING FEE.

(a) The Company shall pay Consultant a consulting fee of Five Thousand Dollars and Zero Cents (\$5,000.00) per month for Services provided to the Company ("Consulting Fee") on the first day of each month beginning on October 1, 2011. The Consultant shall submit a monthly invoice. The Consulting Fee shall be paid within fifteen (15) days of the Company's receipt the invoice.

(b) The Consultant agrees that all Services will be rendered by the Consultant as an independent contractor and that this Agreement does not create an employer-employee relationship between the Consultant and the Company. The Consultant shall have no right to receive any employee benefits including, but not limited to, health and accident insurance, life insurance, sick leave and/or vacation or workers compensation benefits. Consultant agrees to pay all taxes including, self-employment taxes due in respect of the Consulting Fee and to indemnify the Company in the event the Company is required to pay any such taxes on behalf of the Consultant.

IV. EXPENSES.

The Company shall not pay any of the Consultant's expenses incurred while the Agreement between Consultant and the Company exists including any and all travel expenses to and from all work sites, meal expenses; administrative expenses; lodging expenses if work demands overnight stays; and miscellaneous travel-related expenses (parking and tolls).

V. TERMINATION.

(a) If the Consultant voluntarily ceases performing Services, becomes physically or mentally unable to perform the Duties, or is terminated for cause, the Consulting Fee shall cease and terminate as of such date.

(b) Upon termination, neither party shall have any further obligations under this Agreement. Upon termination and, in any case, upon the Company's request, the Consultant shall return immediately to the Company all Confidential Information, as hereinafter defined, and copies thereof.

VI. PROPRIETARY RIGHTS.

(a) Concept and Ideas. Those concepts and ideas disclosed by the Company or its Managing Members to Consultant or which are first developed by Consultant during the course of the performance of Services hereunder and which relate to the Company's present, past or prospective business activities, services, and products, all of which shall remain the sole and exclusive property of the Company. The Consultant shall have no publication rights and all of the same shall belong exclusively to the Company.

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(b) **Confidential Information.** For the purposes of this Agreement, Confidential Information shall mean and collectively include: all information relating to the business, plans and/or technology of the Company or the Managing Member's interests including, but not limited to technical information including inventions, methods, plans, processes, specifications, characteristics, assays, raw data, scientific preclinical or clinical data, records, databases, formulations, clinical protocols, equipment design, know-how, experience, and trade secrets; developmental, marketing, sales, customer, supplier, consulting relationship information, operating, performance, and cost information; computer programming techniques whether in tangible or intangible form, and all record bearing media containing or disclosing the foregoing information and techniques including, written business plans, patents and patent applications, grant applications, notes, and memoranda, whether in writing or presented, stored or maintained in or by electronic, magnetic, or other means.

Notwithstanding the foregoing, the term "Confidential Information" shall not include any information which: (a) can be demonstrated to have been in the public domain or was publicly known or available prior to the date of the disclosure to Consultant; (b) can be demonstrated in writing to have been rightfully in the possession of Consultant prior to the disclosure of such information to Consultant by the Company; (c) becomes part of the public domain or publicly known or available by publication or otherwise, not due to any unauthorized act or omission on the part of Consultant; or (d) is supplied to Consultant by a third party without binder of secrecy, so long as that such third party has no obligation to the Company or any of its affiliated companies to maintain such information in confidence.

(c) **Non-Disclosure to Third Parties.** Except as required by Consultant's Services, Consultant shall not, at any time now or in the future, directly or indirectly, use, publish, disseminate or otherwise disclose any Confidential Information, Concepts, or Ideas to any third party without the prior written consent of the Company which consent may be denied in each instance and all of the same, together with publication rights, shall belong exclusively to the Company.

(d) **Documents, etc.** All documents, diskettes, tapes, procedural manuals, guides, specifications, plans, drawings, designs and similar materials, lists of present, past or prospective customers, customer proposals, invitations to submit proposals, price lists and data relating to the pricing of the Company' products and services, records, notebooks and all other materials containing Confidential Information or information about Concepts or Ideas (including all copies and reproductions thereof), that come into Consultant's possession or control by reason of Consultant's performance of the relationship, whether prepared by Consultant or others: (a) are the property of the Company, (b) will not be used by Consultant in any way other than in connection with the performance of Services, (c) will not be provided or shown to any third party by Consultant, (d) will not be removed from the Company's or Consultant's premises (except as Consultant's Services require), and (e) at the termination (for whatever reason), of Consultant's relationship with the Company, will be left with, or forthwith returned by Consultant to the Company.

VII. WAIVER.

Any waiver by the Company of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of the same or any other provision hereof. All waivers by the Company shall be in writing.

VIII. SEVERABILITY; REFORMATION.

In case any one or more of the provisions or parts of a provision contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision or part of a provision of this Agreement; and this Agreement shall, to the fullest extent lawful, be reformed and construed as if such invalid or illegal or unenforceable provision, or part of a provision, had never been contained herein, and such provision or part reformed so that it would be valid, legal and enforceable to the maximum extent possible. Without limiting the foregoing, if any provision (or part of provision) contained in this Agreement shall for any reason be held to be excessively broad as to duration, activity or subject, it shall be construed by limiting and reducing it, so as to be enforceable to the fullest extent compatible with then existing applicable law.

IX. ASSIGNMENT.

The Company shall have the right to assign its rights and obligations under this Agreement to a party which assumes the Company's obligations hereunder. Consultant shall not have the right to assign his/her rights or obligations under this Agreement without the prior written consent of the Company. This Agreement shall be binding upon and inure to the benefit of the Consultant's heirs and legal representatives in the event of his/her death or disability.

X. AMENDMENTS.

This Agreement may be amended or modified, in whole or in part, only by an instrument in writing signed by all parties hereto. Any amendment, consent, decision, waiver or other action to be made, taken or given by the Company with respect to the Agreement shall be made, taken or given on behalf of the Company only by authority of the Company's Board of Directors.

XI. NOTICES.

Any notices or other communications required hereunder shall be in writing and shall be deemed given when delivered in person or when mailed, by certified or registered first class mail, postage prepaid, return receipt requested, addressed to the parties at their addresses specified in the preamble to this Agreement or to such other addresses of which a party shall have notified the others.

XII. ENTIRE AGREEMENT.

This Agreement constitutes the entire agreement of the parties with regard to the subject matter hereof, and replaces and supersedes all other agreements or understandings, whether written or oral. No amendment or extension of the Agreement shall be binding unless in writing and signed by both parties.

XIII. DEFENSE AND INDEMNIFICATION.

The Company agrees, at its sole expense, to defend the Consultant against, and to indemnify and hold the Consultant harmless from any claims or suits by a third party against the Consultant or any liabilities or judgments based thereon, either arising from the Consultant's performance of services for the Company under this Agreement or arising from any Company services which result from the Consultant's performance of services under this Agreement.

The Company will not use the Consultant's name in any commercial advertisement or similar material used to promote or sell products, unless the Company obtains in advance the written consent of the Consultant.

XIV. GOVERNING LAW.

This Agreement shall be construed in accordance with and governed for all purposes by the laws of the State of Connecticut applicable to contracts executed and wholly performed within such jurisdiction.


EXECUTED, under seal, effective as of the Effective Date.

John G. Rowland

Law Offices of Christian B. Shelton,
Esq. LLC

By:


John Rowland


Christian B. Shelton
Managing Member

Date:

11 / 11 / 11

Date:

11 / 11 / 2011